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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**REHEARING  
DECISION**

FWP/171758

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 1, 2016, under Wis. Admin. Code § HA 3.03(4), to review a decision by the Juneau County Department of Human Services ["County"] in regard to FoodShare benefits ["FS"], a Hearing was held via telephone from Madison, Wisconsin on March 17, 2016. At petitioner's request a Hearing scheduled for February 23, 2016 was rescheduled.

A *Decision* dated April 1, 2016 was issued. That *Decision* concluded that it was not correct to end petitioner's FS effective November 1, 2015. On April 6, 2016 the Division of Hearings and Appeals ["DHA"] received a letter from the County dated April 4, 2016 via U.S. Mail postmark April 4, 2016. That letter was request for a rehearing in this matter. The County's request for a rehearing is GRANTED in part and DENIED in part.

The County's request for a rehearing is GRANTED insofar as it argues that this matter concerns petitioner's January 6, 2016 application for FS. This was part of the record but was not reflected in the April 1, 2016 *Decision*. Accordingly, this *Rehearing Decision* is being issued.

The County's request for a rehearing is DENIED insofar as it states that petitioner did not provide any verification until March 9, 2016, that petitioner was incarcerated until December 30, 2015, and that petitioner's volunteer work did not start until the week prior to March 15, 2016. None of these claimed facts were part of the record of this matter at the time of the April 1, 2016 *Decision*. A rehearing can be granted on the basis of new evidence only if, among other things, there is a showing that the new evidence could not have been discovered previously by due diligence. See, Wis. Stat. § 227.49(3)(c) (2013-14). The County has made no showing that the evidence it now seeks to offer could not have been discovered previously by due diligence.

The issue for determination is whether it was correct to deny petitioner's January 6, 2016 application for FS.

There appeared at that time via telephone the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

BY: [REDACTED] ESS

Juneau County Department of Human Services  
Courthouse Annex  
220 E. LaCrosse Street  
Mauston, WI 53948

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney  
Division of Hearings and Appeals

### **FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]; 35 years old) is a resident of Adams County, Wisconsin.
2. On January 6, 2016 petitioner applied for FS; petitioner is subject to the Able-Bodied Adults without Dependents ["ABAWD"] FS work requirements.
3. Petitioner has been voluntarily doing unpaid work for a disabled person 30 to 35 hours per week; the work includes child care, cleaning round the house, and making some meals.
4. Petitioner's January 6, 2016 FS application was denied because the County claims that petitioner has used 3 months of Time Limited Benefits ["TLB"] without meeting a work requirement during those 3 months (July 2015; August 2015; and, October 2015).

### **DISCUSSION**

Able-Bodied Adults without Dependents ["ABAWD"]<sup>1</sup> must either meet the ABAWD work requirement or an exemption from the work requirement in order to receive FS. Non-exempt ABAWDs who do not meet the work requirement will only be allowed to receive up to 3 full months of Time-Limited Benefits ["TLB"] in a 36-month time period.<sup>2</sup> *FoodShare Wisconsin Handbook* ["FWH"] 3.17.1.1.; See also, Wis. Stat. § 49.79(10)(a) (2013-14); 7 C.F.R. §§ 273.7 & 273.24 (2015).

An FS member is determined an exempt ABAWD if he or she is an ABAWD who meets at least one of the following criteria, as determined by the Income Maintenance ["IM"] agency:

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<sup>1</sup> An FS applicant or member is determined a **non**-ABAWD if he or she meets any one of the following criteria, as determined by the Income Maintenance ["IM"] agency: under age 18 or age 50 and older; unable to work; residing in a FS household with a child under age 18; or, pregnant. *FoodShare Wisconsin Handbook* ["FWH"] 3.17.1.4.

<sup>2</sup> ABAWD eligibility for FS is limited to three (3) months of Time-Limited FS Benefits ["TLB"] in a 36-month period in which the ABAWD is subject to, but is not complying with, the ABAWD work requirement and does not have a qualifying exemption. The three TLB months do not have to be consecutive. FWH 3.17.1.9.

- Determined unfit for employment, which includes someone who is:
  - Receiving temporary or permanent disability benefits from the government or a private source;
  - Mentally or physically unable to work, as determined by the IM agency;
  - Verified as unable to work by a statement from a health care professional or a social worker.
- Receiving Unemployment Compensation [“UC”] or has applied for UC and is complying with UC work requirements;
- Regularly participating in an Alcohol or Other Drug Abuse [“AODA”] treatment or rehabilitation program;
- A student of higher education who is otherwise eligible for FS;
- A high school student 18 years of age or older, attending high school at least half-time;
- Primary caregiver of a dependent child under age 6 or an incapacitated person;
- Receiving transitional FS benefits; or,
- Meeting the ABAWD work requirement outside of the FS Employment and Training program [“FSET”] through work and/or other allowable work program participation.

FWH 3.17.1.5.

An ABAWD is considered to be meeting the ABAWD work requirement if one of the following applies:

1. Working a minimum of 80 hours per month (use converted work hours if paid weekly or bi-weekly);
2. Participating and complying with an allowable work program at least 80 hours per month (allowable work programs include FSET, Refugee Employment and Training, Wisconsin Works [“W-2”], Children First, Workforce Investment Act [“WIA”] programs, Refugee Cash Assistance programs, and programs under section 236 of the Trade Act);
3. Both working and participating in an allowable work program for a combined total of at least 80 hours per month; or,
4. Participating and complying with the requirements of a workfare program.

FWH 3.17.1.7.

For ABAWDs, working is defined as one of the following:

1. Work in exchange for money;
2. Work in exchange for goods or services (“in kind”);
3. Unpaid work (i.e. volunteer work, community service);
4. Self-employed at any wage; or
5. Any combination of the above.

FWH 3.17.1.8.

The County argues that petitioner did not meet the work requirements for 3 months (July 2015, August 2015, and October 2015) and has used-up all of his 3 full months of TLB. Petitioner has been voluntarily doing unpaid work for a disabled person 30 to 35 hours per week (child care, cleaning round the house, and making some meals). The County did not count this work because it was not done through a nonprofit organization. However, volunteer works counts toward the ABAWD work requirement. There

is no requirement that the volunteer work must be done through nonprofit organization. See, FWH 3.17.1.8.

### **CONCLUSIONS OF LAW**

For the reasons discussed above, it was not correct to deny petitioner's January 6, 2016 application for FS because he allegedly has used 3 months of TLB without meeting a work requirement during those 3 months.

**THEREFORE, it is**

### **ORDERED**

That this matter be REMANDED to the County, that the County not deny petitioner's January 6, 2016 application for FS because he has allegedly used 3 months of TLB without meeting a work requirement during those 3 months, and that, within 10-days of the date of this *Decision*, the County issue all FS for which petitioner is otherwise eligible retroactive to January 6, 2016.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 7th day of April, 2016

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\sSean P. Maloney  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on April 7, 2016.

Juneau County Department of Human Services  
Division of Health Care Access and Accountability